




**City Attorney's Office
City of Burbank**

Amy Albano, City Attorney

Memorandum

Date: October 18, 2016

To: Honorable Mayor and City Council Members

From: Amy Albano, City Attorney 

Subject: **Informational Report concerning Measure B on the November 8, 2016 Ballot seeking approval of a 14-gate Replacement Passenger Terminal at the Bob Hope Airport**

RECOMMENDATION

Note and file.

BACKGROUND

On August 1, 2016, the City Council placed a measure on the November 8, 2016, presidential ballot to comply with the City's original Measure B codified at Burbank Municipal Code Section 2-3-112 (2000 Measure B), which provides:

"AIRPORT AGREEMENTS: No approval by the City of Burbank of any agreement between the City and the Burbank-Glendale-Pasadena Airport Authority for a relocated or expanded airport terminal project, or any other discretionary act by the City relating to the approval of a relocated or expanded airport terminal project shall be valid and effective unless previously approved by the voters voting at a City election. [Added by Ord. No. 3541 (Measure B approved by the voters on 11/7/00), eff. 5/24/00.]"

The November 2016 Ballot measure is also called Measure B (2016 Ballot Measure) and the ballot question asks:

"Shall Ordinance No. 16-3,882 be approved allowing no more than a 14-gate, 355,000 square foot replacement terminal and ancillary improvements to be built at the Bob Hope Airport meeting current safety, seismic standards and improving disabled access; demolishing the existing terminal; and modifying Adjacent Property easement and authorizing future agreements necessary to implement the project; in exchange for

governance changes that provide Burbank a greater voice in the future of the airport?"

There are very strict rules that prohibit City officials, as well as employees, from using public resources to campaign for or against a ballot measure once the election is called (Government Code § 54964.). The City is, however, able to use public resources on informational materials (Id.). Because of these legal prohibitions, this Agenda Item is informational only to explain the effects of this 2016 Ballot Measure on City activities, operations, or policies and to remind members of the public where they may find certain documents relating to the replacement terminal project.

All documents referenced in this report may be found on the City's web site on the replacement terminal information page.

DISCUSSION

2016 Ballot Measure

The 2016 Ballot Measure asks Burbank voters to approve ordinance 16-3,882, which in turn does the following:

- Approves a Development Agreement (DA) between the City and Burbank-Glendale-Pasadena Airport Authority (Authority) to allow construction of a 14-gate, no greater than 355,000 square foot replacement terminal on either the Adjacent Property or Southwest Quadrant of the Airport. (See Development Agreement and its Exhibit C - Project Description.)
- Changes the zoning of parking lot A (approximately 3.76 acres) which is part of the Adjacent Property (totaling 49.2 acres) from Planned Development to Airport Zone, which is also the zoning for the rest of the Adjacent Property.
- Changes Planned Development No. 2004-169 on the Southwest Quadrant to allow for shuttle drop-off/pick-up and partially relocates the loop road only if the Authority designates the Southwest Quadrant for location of the replacement terminal.
- Approves modification of the easement that the City has over the Adjacent Property to allow construction of airport facilities including the replacement terminal and allows termination of the easement, if and when the replacement terminal is constructed on the Adjacent Property.

The Authority's proposed replacement terminal project is subject to the 2000 Measure B, thus requiring voter approval for the Development Agreement and the other discretionary acts listed above to be effective.

The approvals for the replacement terminal project included a precise description of the project as shown in the DA and its Exhibit C, and in the FEIR, Volume 1, Chapter 2. Further, schematic drawings of the proposed replacement terminal are on the replacement terminal information page of the City's web site. The final design of the new terminal is subject to a community design process as outlined in Section 4.7 of the DA and Exhibit H, thereto. Any design must conform to the

project components approved by the DA and to the design guidelines. Since there is no further discretionary approval needed from the City Council for the final design of the replacement terminal, the final design is not subject to a separate 2000 Measure B vote.

Future Changes at the Airport

The 2000 Measure B remains in full force and effect no matter which way the November 8th election goes. This means that in the future, if the Authority wishes to expand the passenger terminal, and needs any discretionary approvals from the City or enters into another agreement with the City for such expansion, the 2000 Measure B voter requirement would be triggered.

For example, what if the 2016 Ballot measure passes and the Authority builds the 14-gate replacement terminal on the Adjacent Property, and five years later wants to add 2 more gates to the replacement terminal, will a 2000 Measure B vote be necessary? More than likely no, because no discretionary acts by the City Council will be required.

Such an expansion, however, would be subject to the super majority rule of the amended Joint Powers Agreement that governs decisions of the Authority. (see Second Amendment to the Amended And Restated Joint Exercise of Powers Agreement Among The Cities of Burbank, Glendale And Pasadena Creating An Agency To Be Known As The Burbank-Glendale-Pasadena Airport Authority (Second Amendment to JPA).) This means that two of the three Burbank commissioners must affirmatively vote to add two new gates before such expansion could proceed.

Furthermore, the Authority would need permission from the City Council to add any gates because such an expansion on the Adjacent Property would change the plan of use for the Adjacent Property authorized by the City Council on July 25, 2016 under Public Utility Code Section 21661.6. (see PUC Section 21661.6 Resolution (No. 16-28,870).) All of the Adjacent Property is subject to PUC §21661.6, as well as A-1 North property where the RITC is located. Any change to a plan authorized under the PUC would have to be considered by the City Council at a public hearing.¹

The Second Amendment to the JPA only becomes effective if there is an affirmative 2016 Measure B vote (see page 6, Section 8 of the Second Amendment)². If passed, the supermajority rules take effect and stay in effect whether the replacement terminal is built on the Adjacent Property, Southwest Quadrant or

¹ City Council's decision to approve or amend a plan of use for the Adjacent Property is not subject nor does such approval trigger a 2000 Measure B vote. In *City Of Burbank v. Burbank-Glendale-Pasadena Airport Authority; Michael Nolan, Intervener And Appellant* (2003) 113 Cal.App.4th 465, the court concluded in enacting Public Utilities Code section 21661.6 the Legislature intended the authority it delegated be exercised by the city council in this case specifically and exclusively, precluding use of an initiative in this area.

² The effective date is 90 days after the election or at the end of any legal challenges, if the project is upheld by a court.

never is built. Under the super majority rules (Second Amendment to the JPA), the Authority may not do any of the following without the acquiescence of two of the three Burbank Commissioners:

- Increase the number of commercial airline passenger gates above 14.
- Create or construct any remote parking positions for airline passenger aircraft.
- Approve any expansion of the existing terminal, any expansion of the Replacement Terminal, or any relocation of airline passenger related functions from the Replacement Terminal.
- Amend the Authority's noise rules or a change in enforcement except to implement a mandatory curfew.
- Amend the Authority's voluntary curfew or change in enforcement.
- Abandon the Authority's support for federal legislation to allow a mandatory curfew.
- Approve purchase of real property except for aviation easements.
- Approve an airport management contract or lease with a term over 35 years.

Southwest Quadrant Same Size Terminal Option

The FEIR provided an analysis for three development Options: 1) Adjacent Property Full-Size Terminal Option; 2) Southwest Quadrant Full-Size Terminal Option; and 3) Southwest Quadrant Same-Size Terminal Option. The Authority has said that it only intends to build the same size terminal, if the 2016 Ballot Measure does not pass. In the Authority's Notice of Preparation of their EIR the City was not listed as a responsible agency for this same size terminal option. In the City's Scoping Comment Letter (January 27, 2016) to the Authority, the City stated:

"City as Responsible Agency

5. The Authority should identify City as a responsible agency for all three options given the fact that Authority is proposing Parcel C-1 for the relocation of air cargo airlines (FedEx and UPS) in the "Southwest Quadrant Same-Size Terminal Option." City asserts that Parcel C-1 is subject to Public Utilities Code Section 21661.6."

The City still believes that the Southwest Quadrant Same-Size Terminal Option is subject to City approval, however, the Authority disagrees.

Federal Jurisdiction

Because the airport operates under federal jurisdiction there are many things that are outside of the City's control, and even that of the Airport Authority. In fact much of the past 20 years was spent litigating the limits of the City's control. For instance under established law, the City cannot itself unilaterally impose a limit or a cap on

the number of flights at the airport. This principle was established by the U.S. Supreme Court in litigation over the City's proposed curfew at this airport (*City of Burbank v. Lockheed Air Terminal* (1973) 411 U.S. 624).

Likewise, the Authority may not impose, or enter into an agreement to impose, a cap or limit on flights under federal law without first complying with the procedural and substantive requirements of the Airport Noise and Capacity Act of 1990, 49 U.S.C. 47524. The procedural requirements, set forth in 14 C.F.R. Part 161, include approval by the Federal Aviation Administration (FAA). The FAA has never approved a restriction in the 26 years that this statute has been in effect. As a reminder, the Airport on the behest of the City spent millions of dollars on a Part 161 study requesting a nighttime curfew, which was rejected by the FAA. As a policy matter the FAA has indicated that it would not approve a restriction at the Airport because, in the agency's view, there is no justification for a restriction on operations.

Air Quality

The FEIR identified only certain air quality impacts as being significant and unavoidable, meaning that no mitigation measure is feasible that would bring the impact to a level of less than significant (FEIR, Vol. 1, ES-5-6), although mitigation measures were identified to reduce some of the impacts (FEIR, Vol.1, 5-1). Impacts that are significant and unavoidable as to the Adjacent Property, Southwest Option, and No Project are "violation of operational air quality standards", "increase in non-attainment criteria pollutants" (FEIR, Vol. 1, ES-5) and Cumulative Air Quality Impacts (FEIR, Vol. 1, ES-6 and FEIR p. 3.4-45, ADJ PROP FULL-AIR-9).

Only the Southwest Option causes significant and unavoidable impacts for generation of toxic contaminants, whereas the Adjacent Property and No Project are less than significant (FEIR, Vol. 1, ES-5). This impact is related to emission sources from aircraft taxiing, ground support equipment and auxiliary power units. The Authority adopted a mitigation measure to lessen the impacts of ground support equipment. Aircraft emissions, however, are under the FAA's jurisdiction and the Authority has no ability to regulate them. (see FEIR, Vol. 1, 3.4-58 for more details.)

There are two impacts listed in the FEIR that are significant for No Project, but less than significant for the Adjacent Property and Southwest Option (FEIR, Vol. 1, ES-5). The No Project causes air quality significant impacts in part because the growth projections are the same for all alternatives studied including the "no project alternative" (for more details see FEIR, Vol. 1, Chapter 3.4.)

Traffic

Traffic is analyzed in Chapter 3.17 of the FEIR. All traffic-related impacts under either the Adjacent Property or Southwest Quadrant option are less than significant with appropriate mitigation measures (FEIR, Vol. 1, E-10). Mitigation measures include widening the intersection of Hollywood Way and Winona Avenue to add turn lanes, signalizing the intersection of San Fernando Boulevard and Cohasset

Street, and widening and signaling the intersection of Hollywood Way and the southwest connector ramps connecting to San Fernando Boulevard.

Miscellaneous Items

ADA Access New Terminal

According to Dan Feger, Director of Development Services for the Airport, there will be a fully ADA-accessible, covered, wind-protected access way directly from the hold room to the front door of the aircraft, and there will also be an uncovered pathway on the ground level from the hold room to the back exit door of the aircraft (for those aircraft that have rear exit doors) that will allow passengers who choose to enter and exit from the rear of the aircraft via an uncovered stairway. A fully ADA-accessible walkway means that the access way will comply with all of the ADA-required width, height, slope and rest area standards for a ramped surface. This is in contrast to ordinary jetways seen at most other airports, which are much longer than 30 feet, are continuously sloped, and do not provide the ADA-required horizontal flat rest areas every thirty feet.

Construction Jobs

According to the Authority's attorney, the Authority has approved a Project Labor Agreement and, with very limited exceptions, it guarantees use of union workers for construction.

Cost of Terminal

According to the Authority, the estimated cost of the replacement terminal is \$400,000,000 and terminals are paid for by the airlines, tenants, and passengers who use the facility. Funding sources include FAA grants, parking fees, landing fees, rents from concessionaires and other tenants, passenger facility charges, and federal taxes on every airline ticket sold.

CONCLUSION

The City Council last met in closed session concerning the City's real property interest in the Adjacent Property in October 2015. In November 2015, the City Council endorsed a conceptual term sheet that had already been endorsed by the Authority. The Authority, in December 2015, issued their Notice of Preparation of an EIR for their proposed replacement terminal. Thereafter, the City held various public and community meetings about the project culminating in a public hearing before the City Council on July 25, 2016, at which time the Council approved various entitlements for the project. And the following week, on August 1, 2016, the City Council called for the Measure B vote for the replacement terminal to be held on November 8, 2016.